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March 13, 2000

Sent via e-mail and fax, hand delivery or U.S. mail

Mary L. Cottrell, Secretary
Massachusetts Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02110

Re: Number Pooling, D.T.E. 99-99

Dear Secretary Cottrell:

Enclosed please find for filing the Attorney General's Reply Comments regarding AT&T's Motion for Partial Reconsideration of the January 27, 2000 Letter Order to Accommodate Specific Customer Numbering Requirements, together with a Certificate of Service.

Respectfully submitted,

Karlen J. Reed
Assistant Attorney General
Regulated Industries Division

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Enc.

cc: Kevin Penders, Hearing Officer (w/enc.)

Robert Howley, Hearing Officer (w/enc.)

D. T. E. 99-99 Service List (w/enc.)

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Proceeding by the Department of Telecommunications and)
Energy to conduct mandatory thousands-block number)
pooling trials pursuant to the authority delegated by the)
Federal Communications Commission In the Matter of)
Massachusetts Department of Telecommunications and) D. T. E. 99-99
Energy's Petition for Waiver of Section 52.19 to Implement)
Various Area Code Conservation Methods in the 508, 617,)
781, and 978 Area Codes, CC Docket No. 96-98,)
FCC 99-246, NSD File No. L-99-19 (September 15, 1999))

ATTORNEY GENERAL'S REPLY COMMENTS REGARDING AT&T'S MOTION FOR PARTIAL
RECONSIDERATION OF THE JANUARY 27, 2000 LETTER ORDER TO ACCOMMODATE SPECIFIC
CUSTOMER NUMBERING REQUIREMENTS

On February 15, 2000, AT&T Communications of New England, Inc. ("AT&T") filed a
Motion seeking Partial Reconsideration ("Motion") of the Department's January 27,
2000, Letter Order to Accommodate Specific Customer Numbering Requirements
("Order"). In its Motion, AT&T asks the Department of Telecommunications and Energy

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("Department") to revise its numbering guidelines to accommodate customer specific numbering requests, regardless of the Department's 75-percent fill-rate ratio requirements (Motion at 1). AT&T contends that the Department should grant the Motion because "the Department's guidelines inadvertently fail to accommodate customer specific numbering needs, as required by the grant of authority from the Federal Communications Commission ('FCC')." Id. at 1-2. On March 6, 2000, Initial Comments supporting the Motion were filed by Bell Atlantic-Massachusetts ("Bell Atlantic"), MCI WorldCom, Inc. ("MCIW"), RCN-BecoCom, LLC ("RCN"), and Nextel Communications, Inc. ("Nextel") (collectively, "the Carriers"). (1)

In Initial Comments filed on the same day, the Attorney General urged the Department to deny AT&T's Motion because: (1) the existing fill-rate ratio and waiver requirements properly allocate limited numbering resources, and (2) granting AT&T's Motion would likely lead to abuse of number resources because it would remove Departmental oversight (Attorney General Comments at 1). Pursuant to the procedural schedule adopted in this proceeding, the Attorney General hereby provides Reply Comments to address three issues raised by the Carriers in their Initial Comments in support of AT&T's Motion: (2)

1. Do the Department's fill-rate ratio requirements provide enough flexibility to accommodate customer-specific number requests?
2. Can the Department condition access to growth NXX codes upon compliance with its fill-rate requirements?
3. Should the Department defer enforcement of its existing requirements and, instead, wait for national guidelines from the FCC?

The Attorney General submits that the answers to these questions are: (1) yes, (2) yes, and (3) no, and again urges the Department to deny AT&T's Motion.

1. The Department's fill-rate ratio requirements provide enough flexibility to accommodate customer-specific number requests.

While the Attorney General is sympathetic to the Carriers' desire for maximum flexibility to respond to customer requests and technical limitations, he asserts that the Department's existing waiver procedures are adequate to address legitimate flexibility concerns. These procedures provide a safety valve that is consistent with the FCC's NPRM guidelines⁽³⁾ and will not deprive customers of their choice of carriers for the services they seek. Although Bell Atlantic briefly mentions the waiver procedures in its comment (Bell Atlantic Comments at 2), none of the Carriers have explained why the Department's waiver procedures will not provide the flexibility the Carriers seek. (4) Consequently, the Department should deny AT&T's Motion.

2. The Department can condition access to growth NXX codes upon compliance with fill-rate ratio requirements.

Bell Atlantic suggested that the Department's fill-rate ratio criteria "may also expand the scope of the Department's interim authority from the FCC." Bell Atlantic

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Comments at 3. This suggestion is illogical because the Department's delegated authority to set fill-rate ratios necessarily includes the authority to condition access to growth NXX codes upon compliance with its fill-rate ratio criteria. In its NPRM, the FCC authorized the use of fill-rate ratios because the current standard to determine need for new NXX codes, i.e., months-to-exhaust, does not check hoarding of numbers by carriers in a jeopardy situation, is only an estimate of need, and does not verify historical usage or utilization efficiency. (5) In its Delegation Order, the FCC said that the Department could use a fill-rate utilization standard for growth NXX codes to maximize number utilization efficiency. (6)

3. The Department should not wait for national guidelines.

The Department should continue to enforce its current 75-percent fill-rate ratio and months-to-exhaust requirements, contrary to MCIW's suggestion (MCIW Comments at 2). The FCC granted the Department interim authority to allow it to explore and implement conservation methods that are tailored to meet Massachusetts' number conservation needs. The Department should not wait for federal standards because there is no guarantee that standards will be in place in time to save Massachusetts' area codes, which is the primary purpose of number pooling. The Department's fill-rate ratio requirements are consistent with FCC guidelines and will serve until modified by FCC national guidelines.

4. Conclusion.

For all of the foregoing reasons, the Attorney General urges the Department to deny AT&T's Motion for Partial Reconsideration. While sympathetic to the Carriers' desire for unfettered flexibility over the utilization of numbering resources, the Attorney General submits that the Department should not grant AT&T's Motion. Eliminating the requirement of Department oversight would undoubtedly have the effect of depleting at a faster rate the amount of numbers available for pooling. Until the Department has addressed the fundamental area code problem through a number pooling plan, rate center consolidation, and/or any other conservation method, it should not abandon the one, albeit interim, number conservation measure it has adopted.

Respectfully submitted,

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DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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FCC 99-246, NSD File No. L-99-19 (September 15, 1999))

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding by e-mail and either hand delivery, mail, or fax.

Dated at Boston this 13th day of March 2000.

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1. Bell Atlantic Comments at 3; MCIW Comments at 1-2; RCN Comments at 1; Nextel Comments at 3. But see In the Matter of Numbering Resource Optimization, CC Docket No. 99-200, FCC 99-122, Reply Comments of AT&T Corp., filed August 30, 1999, pp. 19-23 (D.T.E. File #FCC 99-122) (AT&T supported the use of a 75-percent fill-rate ratio requirement with a months-to-exhaust calculation).
2. The basis for the Carriers' position was their agreement with AT&T's argument regarding its desire for maximum flexibility in responding to customer requests (Motion at 1; Bell Atlantic Comments at 3; MCIW Comments at 1-2; RCN Comments at 1; Nextel Comments at 3). Some of these Initial Comments included general references to concerns related to PBX numbering requirements (Bell Atlantic Comments at 3; Nextel Comments at 2), but since those comments do not fully develop those concerns nor explain why any numbering requirements related to PBX installations cannot be addressed under the Department's existing waiver rule, they are not addressed here.
3. Numbering Resource Optimization, Notice of Proposed Rulemaking, CC Docket No. 99-200, FCC 99-122 (rel. June 2, 1999).
4. The Department's waiver procedure is untested. Only one waiver request, now withdrawn, has been filed to date (Number Pooling, D.T.E. 99-99, Omnipoint Request for Assignment of Growth Code Outside of Rationing Plan, filed March 1, 2000, withdrawn March 10, 2000).
5. Numbering Resource Optimization, Notice of Proposed Rulemaking, CC Docket No. 99-200, FCC 99-122 (rel. June 2, 1999), at ¶¶ 57, 60.
6. In the Matter of Massachusetts Department of Telecommunications and Energy's Petition for Waiver of Section 52.19 to Implement Various Area Code Conservation Methods in the 508, 617, 781, and 978 Area Codes, CC Docket No. 96-98, FCC No. 99-246, NSD-L-99-19 (released September 15, 1999) ("Delegation Order") at ¶ 35.